

HIGH COURT OF UTTARANCHAL AT NAINITAL.

Criminal Misc. Application No.167 of 2006

Smt. Rami W/o late Maniya
R/o village Otha
P.O. Thadiyar, Tehsil Purola
District Uttarkashi

.....Applicant

Versus

The Sessions Judge, Uttarkashi

....Respondent

Dated :- 10.03.2006

Hon'ble J. C. S. Rawat, J.

1) The petition under section 482 Cr.P.C. has been filed with the prayer to set aside the order dated 14.2.2006 passed by the Sessions Judge, Uttarkashi in S.T. No.30/2003 and direction may be given to frame the charges against the accused under the Provisions of section 3/10 Scheduled Caste and Scheduled Tribes (Atrocities) Act.

2) Brief facts according to the petition are that the husband of the applicant Maniya has been murdered by one-Govind Singh and thereafter an FIR against the accused was lodged before the Patti Patwari. The Patti Patwari registered the case under section 302 IPC. Thereafter, the chargesheet was submitted before the court below and the trial court framed the charge against the accused under section 302 IPC. Thereafter, the prosecution witnesses were examined before the trial court. During the pendency of the said trial, the applicant-Smt. Rami filed an application before the trial court that a charge under section 3/10 SC & ST Act may also be framed against the accused. It has been alleged before the court below that the applicant and her husband belong to scheduled caste community. It has further been alleged that the accused-Govind Singh, who belongs to higher caste, took her husband from the

house and murdered brutally. As such, there is last scene evidence against the accused person. It was further alleged that the report was lodged before the Patwari but the true version had not been recorded in the report. Thereafter, the matter was investigated and a chargesheet under section 302 IPC was submitted against the accused in the year 2004. Now, the accused has come to the court of sessions. In the meantime, the applicant has filed an application before the Sessions Judge that a charge under section 3/10 SC & ST Act may also be framed against the accused. The Sessions Judge has rejected the same vide order dated 14.2.2006. Feeling aggrieved by this, the applicant has come up before this Court.

3) I have heard Sri S.S.Adhikari learned counsel for the applicant and Sri G.S. Sandhu learned A.G.A.

4) It was contended on behalf of the applicant that the trial court has erred in holding that there is no prima-facie case against the accused under section 3/10 SC & ST Act. It was contended that there were sufficient evidence to frame the charge under the aforesaid section, therefore, the trial court has committed a manifest error in rejecting the said application. Learned A.G.A. refuted the contention. Perusal of the record reveals that the applicant was examined herself before the Sessions Judge. Thereafter, the prosecution witnesses i.e. Vijay Pal, Saniya & Jovan Lal were examined, but nobody has proved the ingredients of section 3/10 SC & ST Act and there is no iota of evidence with regard to section 3/10 SC & ST Act. The trial court has observed that the ingredients of the aforesaid section are lacking in the evidence of the prosecution witnesses. If the version of the complainant is taken into account that Patwari had

not recorded the correct version of the complaint, she should have reported the matter to the court at the beginning that the averments of section 3/10 SC & ST Act has not been recorded in the FIR by the Patti Patwari. Perusal of the statement recorded under section 161 Cr.P.C. reveals that the ingredients of the offence punishable under section 3/10 of the Act have not been disclosed. The FIR was recorded in the year 2003 and thereafter the chargesheet was submitted. When the sessions trial is at the concluding stage, the applicant had filed the application to modify the charge. Therefore, the trial court was justified in rejecting the said application.

5) In view of the foregoing discussion, the petition lack merit and is liable to be dismissed.

(J.C.S.RAWAT, J.)

Dated 10.03.2006

LSR